

ATTACHMENT 1

State of California AIR RESOURCES BOARD

Resolution 04-5

January 22, 2004

Agenda Item No.: 04-1-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, section 43000.5 of the Health and Safety Code finds that emission reductions should be obtained from all classes of vehicles and that the Board should implement both short- and long-range programs to achieve emission reductions from heavy-duty diesel vehicles;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emissions reductions possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, section 43105.5 of the Health and Safety Code requires the Board, to the extent not limited or prohibited by federal law, to adopt that make available emission-related service information for 1994 model year and later motor vehicles to persons engaged in the service and repair of motor vehicles and the manufacture of motor vehicle parts;

WHEREAS, in enacting section 43105.5 of the Health and Safety Code, the State Legislature found that:

There are over 26 million registered motor vehicles in California, and that California residents rely heavily upon those vehicles to conduct their everyday activities;

The use of those motor vehicles results in hundreds of tons of pollutants being emitted into California's air every day, significantly affecting air quality and public health and safety;

It is in the best interests of the state to ensure that California motorists have the ability to obtain service, repair, or replacement of faulty emissions-related components for their motor vehicles and that such ability not be limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers; and

Such a withholding of information from independent automotive repair technicians by vehicle manufacturers may result in improper and needlessly costly repairs that could endanger the public and result in anti-competitive effects harmful to the best interests of the state;

WHEREAS, section 43700 of the Health and Safety Code finds that the reduction of emissions from diesel powered vehicles, to the maximum extent possible, is in the best interests of air quality and public health;

WHEREAS, heavy-duty vehicles account for as much as 29 percent of the oxides of nitrogen and 14 percent of total particulate matter (PM) emitted from all mobile sources statewide;

WHEREAS, the occurrence of emission-related malfunctions in heavy-duty vehicles causes them to emit significantly more pollutants into the air than properly maintained heavy-duty vehicles;

WHEREAS, it is recognized that the manufacture of heavy-duty vehicles is for the most part a non-vertical manufacturing process and that engine manufacturers and transmission manufacturers are critical to final production of a heavy-duty vehicle;

WHEREAS, it was the intent of the State Legislature in enacting section 43105.5 of the Health and Safety Code to assure and stimulate competition in the service and repair of all motor vehicles that are equipped with on-board diagnostic (OBD) systems by ensuring that independent service and repair facilities and aftermarket part manufacturers have access to all emission related information and tools that franchised dealerships and authorized service networks have;

WHEREAS, the Board approved the service information regulation as it applies to light- and medium-duty vehicles on December 13, 2001, and directed the ARB to provide recommendations for amending the regulation as necessary;

WHEREAS, the Board directed the ARB staff at that hearing to work with light- and medium-duty motor vehicle manufacturers and the remanufacturers of on-board computers to determine if a way exists that would allow remanufacturers to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security;

WHEREAS, ARB staff has met with representatives of both light- and medium-duty motor vehicle manufacturers and aftermarket on-board computer remanufacturers during the past two years in an effort to reach accommodation pursuant to the Board's directives;

WHEREAS, in May 2003, the United States Environmental Protection Agency (U.S. EPA) adopted amendments to the federal service information rule that made service and repair information available to aftermarket service providers for 1994 model year and later light- and medium-duty motor vehicles;

WHEREAS, ARB staff believes that through such discussions it has been determined that an amendment within the U.S. EPA final rule reasonably enables remanufacturers to continue to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security;

WHEREAS, the Board has considered the effects of its proposed rulemaking on the economy of the State;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the Board has considered the environmental impacts of the regulation as they pertain to all residents of California, including low-income and minority communities, pursuant to Government Code section 65040.12(c);

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds that:

1. The ARB is in the process of developing regulations for future heavy-duty vehicles to be equipped with OBD systems.
2. Health and Safety Code section 43105.5 applies to all 1994 and later model year vehicles, including heavy-duty vehicles, equipped with OBD systems.
3. For purposes of this regulation, heavy-duty vehicle manufacturers include manufacturers of heavy-duty engines and transmissions.
4. The prompt and effective repair of emission-related malfunctions from heavy-duty vehicles will minimize the amount of excess emissions caused by such malfunctions.

5. Access to complete emission-related service information by independent service and repair facilities and parts manufacturers is necessary for such facilities to properly identify and repair emission-related malfunctions in heavy-duty vehicles.
6. Use of the Internet will provide the independent service and repair industry and aftermarket parts manufacturers with convenient and timely access to heavy-duty manufacturers' emission-related service information.
7. The availability of diagnostic tools and data stream and bi-directional control information used on heavy-duty vehicles will help ensure that the independent service and repair industry has access to all equipment necessary to effectively repair emission-related malfunctions.
8. The availability of reprogramming tools and information used on heavy-duty vehicles will ensure that the independent service and repair industry is able to install on-board computer software updates issued by motor vehicle manufacturers.
9. The potential for misuse of heavy-duty diagnostic and reprogramming tools and information should be abated by allowing heavy-duty manufacturers the option of requiring training classes before such tools and information are made available for purchase.
10. Remanufacturers of on-board computers stimulate competition in California by offering motorists low-cost, replacement on-board computers.
11. The amended regulation, which requires motor vehicle manufacturers to employ reinitialization procedures that rely on generic scan tools and hardware, such as pass-through devices or cables, properly balances the information needs of on-board computer remanufacturers in bench testing immobilizer-equipped computers while maintaining the integrity of motor vehicle security systems.
12. Other minor amendments to the service information regulation are necessary to enhance implementation and enforcement of the regulation.
13. The costs of all emission-related service information and tools must be fair, reasonable, and nondiscriminatory.
14. The amended service information regulation is significantly similar to the federal service information regulation and, if adopted, would not require manufacturers to duplicate compliance efforts.
15. The economic and fiscal impacts of the service information regulations have been analyzed as required by California law, and the conclusions and

supporting documentation for this analysis are set forth in the Notice and Initial Statement of Reasons for this rulemaking.

16. The service information regulations will neither have any significant adverse impact on the environment nor will it adversely impact environmental justice communities.

WHEREAS, the Board further finds that:

1. While the amendments to the service information regulation will not create new emission reductions, it will ensure that the emission benefits attributed to the ARB's emission reduction programs and proposed OBD regulation are achieved.
2. Adoption of the service information regulation amendments will help independent service facilities and aftermarket part manufacturers to compete effectively with franchised dealerships and authorized service networks for consumers' business.
3. Adoption of the service information regulation amendments will provide consumers with a greater choice in who services their vehicles, thereby making it more likely that they will have their vehicles repaired when an emission-related problem occurs.
4. There is no feasible alternative considered by the Board that would be more effective in carrying out the purposes of Health and Safety Code section 43105.5 or would be as effective and less burdensome to affected private persons.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendment of section 1969, title 13, California Code of Regulations, as set forth in Attachment A hereto, with modifications set forth in Attachment B.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to further amend section 1969, title 13, California Code of Regulations, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Air Resources Board staff to continue working with:

Heavy-duty engine manufacturers regarding (1) liability issues that may arise from the aftermarket industries use of service information and tools and (2) the interplay between the soon-to-be proposed heavy-duty OBD regulation and this service information rule.

Light- and medium-duty motor vehicle manufacturers and the aftermarket industry on issues involving immobilizers; specifically on the issue of access to service information regarding the remanufacture of on-board computers, the staff is directed to meet with both sides to see if anything further can be done on the issue.

BE IT FURTHER RESOLVED that the rulemaking record for the heavy-duty OBD service information component of this regulation shall be reopened at the time the Air Resources Board issues its notice of proposed rulemaking for the adoption of on-board diagnostic system requirements for 2007 and subsequent model-year heavy-duty vehicles and engines; the record shall be reopened for the purpose of taking additional comment on issues pertaining to the interplay of the OBD regulation with the service information requirements on heavy-duty manufacturers. .

BE IT FURTHER RESOLVED that the Board hereby determines that the amendments adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board finds that the provisions adopted herein will not cause the California requirements to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. EPA pursuant to section 209(b) of the Clean Air Act.

I hereby certify that the above is a true and correct copy of Resolution 04-5, as adopted by the Air Resources Board.

/s/

Lori Andreoni, Clerk of the Board

Resolution 04-5

January 22, 2004

Identification of Attachments to the Resolution

Attachment A:

Proposed Amendments to Title 13, California Code of Regulations, Chapter 1, Motor Vehicle Pollution Control Devices, Article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles); Section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty and Medium-Duty Vehicles.

Attachment B:

Modifications to Proposed Amendments to Title 13, California Code of Regulations, Chapter 1, Motor Vehicle Pollution Control Devices, Article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles); Section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty and Medium-Duty Vehicles.